



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

4949-A Cox Road, Glen Allen, Virginia 23060

(804) 527-5020 Fax (804) 527-5106

www.deq.virginia.gov

Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

December 7, 2009

Iluka Resources Inc.
Attn: Mr. Matthew Blackwell
12472 St. John Church Road
Stony Creek, Virginia 23882

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: VWP Individual Permit Number 08-2167
Iluka Brinks Mine surface water withdrawal, Greensville County, Virginia
Final VWP Individual Permit

Dear Mr. Blackwell:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 et seq., § 401 of the Clean Water Act Amendments of 1977, and Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the Iluka Brinks Mine surface water withdrawal project. The proposed project will result in no permanent impacts to surface waters.

This permit is valid for ten (10) years from the date of issuance. Continuation of the permit may be necessary if any portion of the authorized activities or any permit requirement, including compensatory mitigation provisions, have not been completed. The total permit term, including any extensions, cannot exceed 15 years. An extension may be requested through written notification to the Department of Environmental Quality - Piedmont Regional Office, provided that there are no changes in the authorized activities.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have **30 calendar days** from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, an owner may request a formal hearing for the formal taking of evidence upon relevant fact issues under Section 2.2-4020 of the Administrative Process Act. A petition for a formal hearing must meet the requirements set forth in 9 VAC 25-230-130.B. of the Virginia Administrative Code. In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is sent to such owner by certified mail

Iluka Brinks water withdrawal
Permit No. 08-2167
Page 2 of 2

If you have any questions, please contact Roger Harris at (804) 527-5177 or roger.harris@deq.virginia.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Corwin D. Chamberlain', written in a cursive style.

Corwin D. Chamberlain
VWP Program Manager

Enclosures: Permit Cover Page, Part I - Special Conditions, Part II - General Conditions

cc: Ms. Scharlene Floyd, U.S. Army Corps of Engineers
Mr. Charles Saunders III, Marshal Miller & Associates
VWP File



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VWP Individual Permit Number 08-2167

Effective Date: December , 2009
Expiration Date: December , 2019

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1341) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to surface waters, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Iluka Resources Inc.

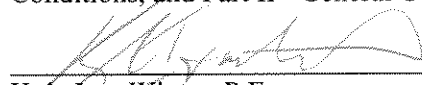
Project: Emporia Reservoir Water Withdrawal

Address: 12472 St. John Church Road
Stony Creek, Virginia 23882

Activity Location: The proposed water withdrawal for the Iluka Brink Mining Operations is located on the south bank of Emporia Reservoir at the terminus of Mill Road in the City of Emporia.

Activity Description: The proposed activity is to withdraw surface water from a temporary intake structure located on the Meherrin River at Emporia Reservoir as described in the Joint Permit Application dated November 2008. The proposed withdrawal will serve as a backup source for Iluka Brink Mining Operations. The proposed temporary surface intake structure will not impact wetlands or stream bed. No mitigation is required.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.



Kyle Ivar Winter, P.E.
Deputy Regional Director



Date

Authorized Activities and Permit Term

A. Authorized Activities

This permit authorizes the minor surface water withdrawal as indicated in the Joint Permit Application received by DEQ on November 25, 2008 and deemed complete by DEQ on September 16, 2009. The permit authorization and conditions are also based on additional submittals approved by DEQ. The following activities are authorized:

1. The withdrawal of surface water from a temporary intake structure located within the southeastern portion of Emporia Reservoir downstream of the floating debris deflecting boom, between the dam and the Dominion Virginia Power substation located along the south bank of the reservoir in the City of Emporia. Authorization of this withdrawal is also subject to the conditions in Part I.E. below.

B. Permit Term

This permit is valid for 10 years from the date of issuance. A new permit may be necessary for the continuance of the authorized activities, including water withdrawals, or any permit requirement that has not been completed. The permit term shall not exceed 15 years.

Project Construction at Impact Site

C. Standard Project Conditions

1. The activities authorized by this permit shall be executed in such a manner that any impacts to stream beneficial uses are minimized. As defined in § 62.1-10(b) of the Code, "beneficial use" means both instream and offstream uses. Instream beneficial uses include, but are not limited to, the protection of fish and wildlife habitat, maintenance of waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream beneficial uses include, but are not limited to, domestic (including public water supply), agricultural, electric power generation, commercial, and industrial uses. Public water supply uses for human consumption shall be considered the highest priority.
2. No activity shall substantially disrupt the movement of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the primary purpose of the activity is to impound water.
3. Flows downstream of the project area shall be maintained to protect all uses.

4. No activity shall cause more than minimal adverse effect on navigation, and no activity shall block more than half of the width of the stream at any given time.
5. The activity shall not impede the passage of normal or expected high flows, and any associated structure shall withstand expected high flows.
6. Continuous flow of perennial springs shall be maintained by the installation of spring boxes, French drains, or other similar structures.
7. Activities shall be conducted in accordance with any Time-of-Year restriction(s) as recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission. The permittee shall retain a copy of the agency correspondence concerning the Time-of-Year restriction(s), or the lack thereof, for the duration of the construction phase of the project.
8. All excavation, dredging, or filling in surface waters shall be accomplished in a manner that minimizes bottom disturbance and turbidity. Turbidity levels downstream of the construction site shall not exceed turbidity levels upstream of the construction site at any time.
9. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
10. All construction, construction access, and demolition activities associated with this project shall be accomplished in a manner that minimizes construction materials or waste materials from entering surface waters, unless authorized by this permit. Wet, excess, or waste concrete shall be prohibited from entering surface waters.
11. All fill material placed in surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
12. Stormwater runoff shall be prohibited from directly discharging into any surface waters. Best management practices (BMP) designed, installed, and maintained, as described in the Virginia Erosion and Sediment Control Handbook (Third Edition, 1992, or the most recent version in effect at the time of construction) and the Virginia Stormwater Management Handbook (First Edition, 1999, or the most recent version in effect at the time of construction), shall be deemed suitable treatment prior to discharge into surface waters. Installation of alternative practices not described in these references shall be submitted to DEQ for approval prior to beginning construction.
13. Measures shall be employed at all times to prevent and contain spills of fuels, lubricants, or other pollutants into surface waters.

14. Machinery or heavy equipment in temporarily impacted wetlands shall be placed on mats or geotextile fabric, or other suitable means shall be implemented, to minimize soil disturbance to the maximum extent practical. Mats, fabrics, or other measures shall be removed as soon as the work is complete in the temporarily impacted wetland.
15. Heavy equipment is authorized for use within the stream channel during project construction or stream restoration activities when site conditions prohibit access from the streambank. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible.
16. Temporary disturbances to wetlands, stream channels, and/or stream banks during project construction activities shall be avoided and minimized to the maximum extent practicable.
17. All temporarily disturbed wetland areas shall be restored to preconstruction conditions within **30 calendar days** of completing work in the areas, which shall include re-establishing pre-construction contours, and planting or seeding with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested), except for invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.
18. All temporarily impacted streams and stream banks shall be restored to their original elevations and contours within **30 calendar days** following the construction at that stream segment, and the banks shall be seeded or planted with the same vegetative cover type originally present along the banks, including supplemental erosion control grasses if necessary but not including invasive species identified on DCR's Invasive Alien Plant Species of Virginia list. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.
19. All materials (including fill, construction debris, excavated materials, and woody materials, that are temporarily placed in wetlands, in stream channels, or on stream banks) shall be placed on mats or geotextile fabric, shall be immediately stabilized to prevent the material or leachate from entering surface waters, and shall be entirely removed within **30 calendar days** following completion of that construction activity. After removal, disturbed areas shall be returned to original contours, shall be stabilized, and shall be restored to the original vegetated state within **30 calendar days**. The permittee shall take all appropriate measures to promote and maintain the revegetation of temporarily disturbed surface waters through the **second year post-disturbance**.

20. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.
21. Virginia Water Quality Standards shall not be violated in any surface waters as a result of the project activities.
22. Seeds used for all project and compensation activities shall conform to the Virginia Seed Law (Sections 3.1-262 Code of Virginia) and Virginia Seed Regulations (2 VAC 5-390-10 et seq).
23. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction. These controls shall be placed prior to clearing and grading activities and shall be maintained in good working order, to minimize impacts to surface waters. These controls shall remain in place only until clearing and grading activities cease and these areas have been stabilized.
24. All *non-impacted* wetlands, streams, and designated upland buffers that are within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated for the life of the construction activity within that area. All non-impacted open water areas within the project or right-of-way limits, and that are within fifty feet of any project activities, shall be clearly flagged or demarcated, as practicable, for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas*.
25. All required notifications and submittals shall be submitted to the DEQ office stated below, to the attention of the VWP permit manager, unless directed in writing by DEQ subsequent to the issuance of this permit:

DEQ-Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060

26. All reports required by this permit and other information requested by DEQ shall be signed by the permittee or a person acting in the permittee's behalf, with the authority to bind the permittee. A person is a duly authorized representative only if *both* criteria below are met. If a representative authorization is no longer valid because of a change in responsibility for the overall operation of the facility, a new authorization shall be immediately submitted to DEQ.
 - a. The authorization is made in writing by the permittee.

- b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

27. All submittals shall contain the following signed certification statement:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

28. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery at 1-804-527-5020. If DEQ cannot be reached, the spill shall be reported to the Virginia Department of Emergency Management (DEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802.
29. DEQ shall be notified in writing within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance or to change the location of any structure are prohibited until approved by DEQ.
30. The permittee shall notify the DEQ of any additional impacts to surface waters, including wetlands; of any modifications of the intake structure; and of any change to the type of surface water impacts associated with this project. Any additional impacts, modifications, or changes shall be subject to individual permit review and/or modification of this permit. Compensation may be required.

D. Projects Involving Stream Modifications, Including Intake/Outfall Structures

1. Any exposed slopes or streambanks shall be stabilized immediately upon completion of work in each impact area. Methods and materials for stabilization shall be in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
2. Redistribution of existing stream substrate for erosion control purposes is prohibited.

3. Material removed from the stream bottom shall not be deposited into surface waters unless otherwise authorized as fill material in this permit.
4. Riprap apron for all outfalls shall be designed in accordance with Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, or the most recent version in effect at the time of construction.
5. For streambank protection activities, structures and backfill shall be placed as close to the streambank as practical, while still avoiding and minimizing impacts to vegetated wetlands to the maximum extent practicable. No material shall be placed in excess of the minimum necessary for erosion protection.
6. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills, breakwaters, dams, or weirs.

E. *Projects Involving Surface Water Withdrawals*

1. The permittee shall install a pump with a maximum pumping capacity at design total system head not to exceed 1000 gallons per minute (gpm). The maximum daily withdrawal shall be one million gallons per day.
2. The permittee shall not withdraw water from Emporia Reservoir if the water level in the reservoir is below the operating window of the power plant.
3. Within 60 days of permit issuance the permittee shall provide DEQ a plan that describes:
 - a. The method that will be used to ensure that withdrawal will occur in accordance with condition Part I.E.2. DEQ shall have 30 days within which to evaluate and comment on the method.
 - b. The method that will be used to determine the volume of available stored water at the Brink Mine on a daily basis. DEQ shall have 30 days within which to review and comment on the method.
 - c. The method that will be used to determine the total volume of water withdrawn from the Brink Well Field on a daily basis. DEQ shall have 30 days within which to review and comment on the method.
4. The permittee shall monitor the The Meherrin River at Emporia gage (USGS 02052000) to determine if withdrawals from Emporia Reservoir are allowed. The permittee shall monitor the gage on a daily basis at the time when pumping is initiated and record the mean discharge from the previous day. If pumping is occurring continuously from one day to the next, the daily mean discharge from the previous day shall be monitored by 7am.

5. The withdrawal from the Emporia Reservoir shall be limited by the following flow-by conditions. The volume of available stored water at the Brink Mine shall be determined using the plan required by condition Part I.E.3.
 - a. If the volume of available stored water at the Brink Mine is less than 13.5 million gallons, the permittee shall not withdraw water when the daily mean discharge from the previous day at the Emporia Gage is less than 112 cubic feet per second (cfs).
 - b. If the volume of available stored water at the Brink Mine is 13.5 million gallons or greater but less than 21.5 million gallons, the permittee shall not withdraw water when the daily mean discharge from the previous day at the Emporia Gage is less than 130 cubic feet per second (cfs).
 - c. If the volume of available stored water at the Brink Mine is 21.5 million gallons or greater, the permittee shall not withdraw water when the daily mean discharge from the previous day at the Emporia Gage is less than 140 cubic feet per second (cfs).
6. Prior to initiating the permitted withdrawal, the permittee shall install a totalizing flow meter capable of reading the volume of water pumped each day. The meter shall be tested in accordance with American Water Works Association (AWWA) Manual M-6, "Water Meters - Selection, Installation, Testing, and Maintenance". The meter shall produce volume determinations within plus or minus 10% of actual flows. A defective meter or other device must be repaired or replaced within 30 days. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals.
7. On each day the water is pumped from Emporia Reservoir, the permittee shall monitor and record:
 - a. the date,
 - b. method of confirmation of the water level in the Emporia Reservoir to ensure compliance with condition Part I.E.2,
 - c. the daily mean discharge from the previous day at the Meherrin River at Emporia gage (USGS 02052000),
 - d. the volume of available storage at the Brink Mine and the associated minimum flow-by specified in condition Part I.E.5,
 - e. the actual daily withdrawal volume in gallons per day,
 - f. the meter reading on the totalizing meter at the start of pumping,

- g. the meter reading on the totalizing meter at the end of pumping or at the time of the next stream gage reading, whichever comes first.
 - h. the daily volume of groundwater withdrawn from the Brink Well Field as specified in Part I.E.3.
- 8. An annual water withdrawal report shall be submitted to the DEQ Office of Surface and Groundwater Supply Planning at P.O. Box 1105, Richmond, Virginia, 23218 by January 31st for the previous calendar year. Reporting surface water withdrawals in accordance with the conditions of this permit satisfies the reporting requirement for the Water Withdrawal Reporting Regulation 9VAC25-200-10 et seq. as required under the State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9VAC25-200 et seq.). The permittee shall tabulate and report to DEQ for the information required in Part I.E.7 each day that pumping took place. Total withdrawals shall also be summed by month and by calendar year.
- 9. The Year 4 annual report required by condition Part.1.E.8 shall include a calculation of the average daily volume of groundwater withdrawn from the Brink Well Field since permit issuance based on daily groundwater volume withdrawn from the Brink Well Field required by condition Part I.E.7. If the average daily volume of groundwater withdrawn since permit issuance is greater than 650,000 gallons, DEQ will reevaluate the surface water withdrawal limits in condition Part I.E.5. DEQ may revise the surface water withdrawal limits in Part I.E.5. to ensure that the amount of surface water withdrawal authorized by this permit is limited to the amount that is being put to beneficial use. Any revision to the permit conditions will require a permit modification.
- 10. Water withdrawal monitoring and reporting activities shall comply with this section (Part 1.E), Part I.C, and Part II. All records and information that result from the monitoring and reporting activities required by this permit, including any records of maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.
- 11. In the event that the Governor or the Virginia Drought Coordinator declares a drought emergency in the Chowan River Drought Evaluation Region, the permittee shall implement the mandatory conservation measures, as detailed in Attachment A of this permit. The permittee shall be responsible for determining when drought emergencies are declared. DEQ may require documentation that mandatory conservation measures were implemented during declared drought emergencies.
- 12. To minimize the impingement and entrainment of fish eggs, larvae and other aquatic life, the permittee shall have installed a screen at the intake on Emporia Reservoir

prior to operation. The screen shall have a maximum screen width opening not larger than 1 millimeter and maximum screen face intake velocity of 0.25 feet per second.

13. If Brunswick County initiates the surface water withdrawal associated with VWP Individual Permit No. 01-1193 before March 27, 2017, VWP Individual Permit No. 08-2167 may be reopened to evaluate and ensure adequate instream flows. If reopened, any revision to the permit conditions contained herein will require a permit modification.

F. Project Construction Monitoring and Submittals (Impact Site)

Pre-Construction Monitoring

1. The permittee shall conduct photographic monitoring of pre-construction conditions in permitted intake location covered by this permit. Photographic monitoring shall be conducted by the following method: Enumerated photo stations shall be established at each permitted impact area that shall be used for the duration of construction activities. The directional orientation of each photo station shall remain constant during all monitoring events. Photo stations shall be sufficient to represent permitted activities. Photo stations may be established via water craft or temporary floating structures. Each photograph taken shall be labeled with the permit number, the permitted impact area, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the photograph subject. This information shall be provided as a separate attachment to each photograph, if necessary.

Pre-Construction Submittals

2. Final plans for the temporary water withdrawal structure shall be submitted 30 calendar days prior to initiating any land disturbance or construction in permitted impact areas. Construction activities shall not be initiated until DEQ has both reviewed and commented on the plans, or until 30 calendar days have passed, during which time no DEQ comments were received regarding the plan. In the event DEQ submits comments on the final plans, construction shall not proceed until comments are resolved to DEQ's satisfaction.
3. Construction shall be performed in accordance with the final construction plans submitted to DEQ. Final construction plans shall include the location and orientation of all photo monitoring stations. Any changes to the final plans for permitted areas shall be submitted to DEQ immediately upon determination that changes are necessary. DEQ approval shall be required prior to implementing the changes.

4. The permittee shall submit written notification at least ten calendar days prior to the initiation of land disturbance or construction activities in permitted areas or any water withdrawal activities. The notification shall include a projected schedule for initiating and completing work at each permitted impact area.

Monitoring During Construction

5. The permittee shall conduct photographic monitoring of construction activities to document that the permitted activities are in compliance with permit conditions, and to document any events that are not in compliance with the construction-related permit conditions. The permittee shall use the same photo method and location that was used for pre-construction monitoring.
6. Photographic monitoring during activities in each permitted impact area shall be required during each month of construction.
7. For temporary disturbances to surface waters, the permittee shall conduct photographic monitoring after the temporary disturbance activity is complete in order to document that the area has been restored in compliance with these permit conditions.

Construction Monitoring Reports

8. Construction Monitoring Reports shall be submitted to DEQ monthly. The reports shall be submitted by the 10th calendar day of the month after monitoring takes place. The reports shall include the following, as appropriate:
 - a. A written narrative stating whether or not work was performed during the monitoring period in each permitted impact area. If work was performed, the narrative shall include a description of the work performed, when the work was initiated, and the expected date of completion.
 - b. A summary of activities conducted to comply with the permit conditions, including items associated with meeting specific permit conditions and a description of erosion and sediment controls used to protect water quality and any maintenance performed on the controls.
 - c. A written summary, including photographs, of non-compliance events or problems encountered, any corrective actions taken, and any subsequent notifications to DEQ.
 - d. A summary of anticipated work to be completed during the next reporting period, and an estimated date of construction completion at all permitted impact areas.

- e. A labeled site map depicting all permitted impact areas and photo stations.
- f. Properly labeled photographs, including those documenting the completed restoration of temporarily disturbed surface waters. The first construction monitoring report shall also include the photographs taken at each permitted impact area prior to initiation of land disturbance or construction activities in that area.

Post-Construction Monitoring

- 9. The permittee shall conduct photographic monitoring of all permitted impact areas upon completion of construction and stabilization of the area. The permittee shall use the same photo method and location that was used for pre-construction monitoring.

Post-Construction Submittals

- 10. Post-construction photographs of permitted impact areas shall be submitted within 30 calendar days of completion of construction in the permitted impact area.
- 11. The permittee shall submit written notification within **30 calendar days** after the completion of all activities in all permitted impact areas authorized under this permit.

Part II – General Conditions

A. *Duty to Comply*

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. *Duty to Cease or Confine Activity*

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. *Duty to Mitigate*

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

D. *VWP Permit Action*

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Reissuance, and Termination of VWP permits).

E. *Inspection and Entry*

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;
 - d. The name of the individuals who performed the analyses;

- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

H. *Transferability*

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and reissuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

I. *Property rights*

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. *Reopener*

Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

K. *Compliance with State and Federal Law*

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude

the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and reissued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "reopener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's withdrawal of water are detrimental to the instream beneficial use and the withdrawal of water should be subject to further net limitations or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;

2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. *Civil and Criminal Liability*

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. *Oil and Hazardous Substance Liability*

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. *Unauthorized Discharge of Pollutants*

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;
3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses.
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
 - b. Filling or dumping
 - c. Permanent flooding or impounding

- d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

R. *Permit Extension*

1. Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification request an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.